

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jack Corcoran Associates, Inc. :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1972 & 1973 :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of June, 1981, he served the within notice of Decision by certified mail upon Jack Corcoran Associates, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Corcoran Associates, Inc.
189 Elm St.
Westfield, NJ 07090

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
5th day of June, 1981.

Annice A. Hagelberg

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 5, 1981

Jack Corcoran Associates, Inc.
189 Elm St.
Westfield, NJ 07090

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACK CORCORAN ASSOCIATES, INC.	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on Business	:	
Corporations under Article 9-A of the Tax Law	:	
for the Fiscal Years Ended September 30, 1972	:	
and September 30, 1973.	:	

Petitioner, Jack Corcoran Associates, Inc., 170 Broadway, New York, New York 10038, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal years ended September 30, 1972 and September 30, 1973 (File No. 24776).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1980 at 1:15 P.M. Petitioner appeared by Jack Corcoran, president. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner had a regular place of business outside New York within the intendment of section 210.3(a)(4) of the Tax Law.

FINDINGS OF FACT

1. On December 27, 1978, the Audit Division issued to petitioner, Jack Corcoran Associates, Inc. ("Associates"), two notices of deficiency asserting additional franchise taxes due under Article 9-A of the Tax Law for the fiscal years ended September 30, 1972 and September 30, 1973, in the amounts \$874.00

and \$2,693.44, respectively, with interest thereon. The deficiencies were asserted by reason of changes in taxable income made by the Internal Revenue Service, and an adjustment of the business allocation percentage to one hundred percent.

2. On November 28, 1977, Jack Corcoran, as president of Associates, signed a consent extending the period of limitation for assessment of tax under Article 9-A of the Tax Law for the fiscal year ended September 30, 1973, to and including December 31, 1978.

3. On petitioner's franchise tax report for the fiscal year ended September 30, 1972, the business allocation percentage was calculated to be 66.8 percent; for the fiscal year ended September 30, 1973, the business allocation percentage was 36.45.

4. At the formal hearing, counsel for the Audit Division stipulated that the portion of the deficiency for fiscal year 1972 which related to adjustment of the business allocation percentage had been asserted in an untimely manner.

5. Associates is a corporation organized under New York law and is a "one-man" operation. During the years at issue, Mr. Corcoran was the president and sole employee. He was a mortgage broker who did business exclusively with institutions, such as savings and loan associations, savings banks, insurance companies and pension funds, in approximately forty states.

6. Nearly all Mr. Corcoran's services were performed at the offices he maintained at his homes in New Jersey and Florida (via telephone) and at the offices of his clients. The corporation paid rent for use of the offices in Mr. Corcoran's homes and in addition, rented office space at 170 Broadway, New York, at which was located a telephone answering machine. The telephone

Mr. Corcoran used to conduct his business from his office in New Jersey was listed to him personally, not to Associates.

7. The only business records Mr. Corcoran maintained consisted of a checkbook, which was kept at the office in his New Jersey residence. Throughout negotiations among buyer, seller and Mr. Corcoran, all documentation (except for the commitment of the buyer to purchase and the authorization of the seller permitting Mr. Corcoran to sell on his behalf) was retained by the seller.

8. The automobile used by Mr. Corcoran in his business was registered in his individual name.

9. For the fiscal years concerned, petitioner did not file franchise tax returns nor pay franchise or other corporation tax in any jurisdiction other than New York.

CONCLUSIONS OF LAW

A. That during the period at issue section 210.3(a)(4) of the Tax Law provided in relevant part:

"...if the taxpayer does not have a regular place of business outside the state other than a statutory office, the business allocation percentage shall be one hundred percent..."

B. That during the period at issue, the State Tax Commission furnished, by regulation, the following definition of a "regular place of business":

"A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space which is regularly used by the taxpayer in carrying on its business."
Former 20 NYCRR 4.11(b).

C. That petitioner's office located in the president's New Jersey residence did not qualify as a regular place of business so as to entitle the corporation

to allocate its business income at less than one hundred percent. It maintained no regular place of business at any location other than 170 Broadway, and it did not file franchise tax returns with any jurisdiction other than New York. Matter of Slacsar Publishing Company, Ltd., State Tax Comm., August 14, 1975.

D. That in accordance with the stipulation given by counsel for the Audit Division, that portion of the deficiency for fiscal year 1972 relating to adjustment of the business allocation percentage is cancelled. Tax Law section 1083(c)(7).

E. That the petition of Jack Corcoran Associates, Inc. is granted to the extent indicated in Conclusion of Law "D"; that the Notice of Deficiency for fiscal year 1972 issued on December 27, 1978 is to be modified accordingly; and that the Notice of Deficiency for fiscal year 1973 issued on December 27, 1978 is sustained in full.

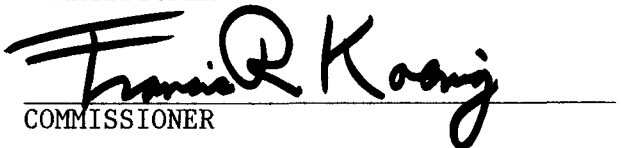
DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER